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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 156

MORROW RADIO MANUFACTURING CO., a corporation,
Petitioner,

v.

UNITED STATES OF AMERICA

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT

The Government's brief in opposition has served to sharpen the principal question which petitioner asks the Court to review. Both parties agree that the tax imposed by section 4141 of the Internal Revenue Code of 1954 on the sale of radio and television components is only applicable when the chassis and other articles

named in section 4142 are "suitable for use" with, in this case, a "radio receiving set." The parties disagree as to the meaning of "radio receiving set." The Government argues that "radio receiving set" is used in a "generic" sense to describe "an aggregation of parts capable of receiving radio signals and converting them into sound." (Govt. Br. 4) Petitioner asserts that a "radio receiving set" named in section 4141 was intended by Congress to mean, and does mean, a "complete" radio receiving set manufactured and sold as one integrated unit.

This reply brief is impelled by (1) the Government's failure to recognize the importance of having the issue set forth above resolved by this Court, and (2) the Government's misstatement as to the presence of guiding legislative history.

1.

In its petition for a writ of certiorari, petitioner set forth cogent reasons why the Court should exercise its power of review. Petitioner emphasized the importance of the federal question presented "which has not been, but should be settled by this Court." See Rule 19, Rules of the Supreme Court of the United States. Petitioner pointed out that the court of appeals has rendered an erroneous decision in an area of excise tax law governing revenue of $17 million annually, and that the case before the Court is the only decided case rendered in this important field in the almost thirty years of its existence. (Pet. 9).

Petitioner also emphasized the peculiar retroactive effect of excise tax interpretations. (Pet. 10) Congress recognized this peculiar status when it enacted

the predecessor to section 4141 in 1932. The report of the House Committee on Ways and Means alluded to this problem as follows:

> "Obviously, the decisions [of an interpreting body] will require time. The imposition, retroactively, of tax liabilities will follow. Businesses will be ruined. And the tax will become unbearable." H.R. Rep. No. 708, 72nd Cong., 1st Sess., 1939-1 (Part 2) Cum. Bull. 481.

This unique effect of excise tax decisions upon manufacturers of the items taxed is, by itself, a sufficient reason for the Court to review the important question of federal tax law presented. But manufacturers of radio and television components are not the only ones affected. If an erroneous decision of a court of appeals such as this is allowed to stand unreviewed, manufacturers may be forced to add 10% to their sales price in order to provide for the asserted applicability of the tax. The result is that the public, in the form of individual consumers, needlessly bears the burden of an inflated sales price.

What is the answer of the Government to these and the other compelling reasons advanced by petitioner for Supreme Court review? Its answer, with the exception of a summary remark in its "Conclusions" (Govt. Br. 5), is to argue the merits of the legal question only. Compare Rule 19, *supra*. Thus the reasons for review urged by the petitioner stand uncontradicted.

2.

In the area touched upon by the Government in its brief in opposition, misstatements are made. One such

misstatement deserves correction now. The Government argues that petitioner would define "radio receiving sets" as follows:

> "as including only sets that are 'manufactured and sold as single, complete, operating units' (Pet. 14) and excluding sets consisting of separately purchased components assembled into an operating unit by the purchaser."

The Government continues:

> "There is no basis in either the text or the history of the statute for giving 'radio receiving sets' anything other than its ordinary meaning—*i.e.*, an aggregation of parts capable of receiving radio signals and converting them into sound." (Govt. Br. 4)

In 1932 Congress used the term "radio receiving sets" in enacting section 607 of the Revenue Act of 1932 (c. 209, 47 Stat. 169). This section, although entitled "Tax on Radio Receiving Sets, Etc.," actually did not include radio receiving sets but only imposed a tax upon the sale of enumerated articles if they were "suitable for use in connection with or as part of radio receiving sets . . ."

In 1939, *the provisions of* section 607 of the Revenue Act of 1932, here pertinent, were incorporated into the Internal Revenue Code of 1939 as section 3404. That section was in turn amended in 1941[1] to include the tax on the sale of radio receiving sets as such, and to define components as chassis and other articles specifically named which "are suitable for use" with the newly included radio receiving sets, etc. Congress, thus, in order to raise additional reve-

[1] Revenue Act of 1941, c. 412, 55 Stat. 687.

nue, continued the existing tax in effect, and in addition, placed a tax on the sale of radio receiving sets. The committee report of the House Ways and Means Committee on the 1941 amendment, is particularly pertinent. That report states:

> "*Radios, phonographs, phonograph records, and musical instruments.*—Under existing law the tax applies only to parts and accessories for radio receiving sets and combination radio and phonograph sets. This category has been expanded to include *completed radio sets*, phonographs, phonograph records, automobile radios, and musical instruments." (Emphasis added) H.R. Rep. 1040, 77th Cong., 1st Sess., 1941-2 Cum. Bull. 439.

Thus Congress, having considered the imposition of a tax in 1932 upon the sale of radio receiving sets, in reconsidering such a tax in 1941 went back and used the same phrase as that employed in section 607 of the Revenue Act of 1932, and defined it as a "completed" radio receiving set. This phrase has been used in all subsequent revenue legislation affecting the same subject without the slightest indication of any change in meaning.

In this context the meaning of the phrase "radio receiving set" becomes crystal clear. The House committee in 1941 was in a sense looking both backward and forward when it defined that phrase. A radio receiving set was and is a "completed" radio receiving set. And since the tax imposed by section 4141 is one upon the sale by manufacturers, Congress by including radio receiving sets as one of the articles enumerated therein meant a radio receiving set manufactured and sold as one complete integrated unit. This is the "radio receiving set" with which an article named in section

4142 must be "suitable for use" in order to be classed as a radio and television component.

The Committee's understanding of the phrase in question is, after all, only confirmatory of common parlance and ordinary speech. The ordinary American says that he is going to buy "a radio" when he intends to purchase a "radio receiving set." What is a "radio," in the everyday sense, but a single integrated unit manufactured and sold as such? Advertisements—which both reflect and create ordinary parlance—do not, for example, present some loose "aggregation of parts" as a "radio" or "radio receiving set." It is revealing to see that Congress, too, was accustomed to the use of the terms "radio" and "radio receiving set" interchangeably. See Hearings Before the Committee on Ways and Means, 72nd Cong., 1st Sess., 717-728 (1932); and Hearings Before the Committee on Finance, 72nd Cong., 1st Sess., 1028-1044 (1932).

Thus, contrary to the Government's assertion, the legislative history of the sections under consideration combines with common knowledge to support petitioner's position.

In addition, the Treasury itself has interpreted the statute in the manner proposed by petitioner. Petitioner has referred to Rev. Rul. 56-388, 1956-2 Cum. Bull. 808 (Pet. 7, 11, 14, A17-18). Although the Government attempts to rebut petitioner's interpretation of this ruling (Govt. Br. 4-5), no attempt is made to refute the clear implication of Sec. 48.4141-2, Treasury Regulations on Manufacturers Excise Taxes, that a radio receiving set is a complete unit which includes the common cabinet for housing all the other articles. (Pet. 12.)

CONCLUSION

The Government has failed to show any valid reason for the refusal of certiorari. It is respectfully submitted that the petition for a writ of certiorari should be granted.

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August, 1961